

REMARKS

Claims 1 and 3-10 are pending in this application. By this Amendment, claim 1 is amended, claim 2 is canceled, and claims 8-10 are added. Support for the amendments to the claims may be found, for example, in original claim 2 and in the specification at page 3, line 37 - page 4, line 3; page 4, lines 4-9; and page 10, lines 21-27. No new matter is added.

I. Obviousness-Type Double Patenting Rejection

The Office Action provisionally rejects claims 1 and 7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 15 of U.S. Patent No. 7,314,845 to Kuno (herein "Kuno 1") in view of U.S. Patent Application Publication No. 2002/0049137 to Morikawa et al. (herein "Morikawa"). By this amendment, the subject matter of non-rejected claim 2 is incorporated into claim 1, and claim 2 is canceled, rendering the rejection moot as to claim 1. As to remaining claim 7, Applicant respectfully traverses the rejection.

The claimed process for producing an exhaust gas purifying catalyst, in claim 7, indicates that the pH of a sol is adjusted to aggregate a population of ceria colloid particles, and then the pH of a sol is adjusted to aggregate a population of zirconia colloid particles. Therefore, the pH of a sol is adjusted in two stages.

Claim 15 of Kuno 1 does not teach or suggest the adjustment of the pH in order to aggregate a population of ceria and/or zirconia colloid particles as required by instant claim 7. Morikawa fails to cure this deficiency. Therefore, Kuno 1 and Morikawa fail to teach or suggest all of the feature of claim 7. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

II. Rejection Under 35 U.S.C. §112, Second Paragraph

The Office Action rejects claims 1-6 for lack of proper antecedent basis under 35 U.S.C. §112, second paragraph. By this amendment, claim 1 is amended to further define a core part having ceria and zirconia.

Therefore, in view of the amendment discussed above, Applicant respectfully submits that claims 1-6 meet the requirements of 35 U.S.C. §112, second paragraph. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

III. Rejection Under 35 U.S.C. §102

Claim 1 is amended to contain the subject matter of canceled claim 2, which was not rejected by the Office Action under 35 U.S.C. §102(b) as anticipated over Morikawa. Claims 4-6 variously depend from claim 1 and, thus, also are not anticipated by Morikawa. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejection Under 35 U.S.C. §103

A. Morikawa

The Office Action rejects claims 2 and 3 under 35 U.S.C. §103(a) over Morikawa. By this amendment, claim 2 is canceled, rendering the rejection moot as to this claim. As to remaining claim 3, Applicant respectfully traverses the rejection.

Independent claim 1, from which instant claim 3 depends, recites "[a]n exhaust gas purifying catalyst comprising a metal oxide particle and rhodium supported thereon." Further, claim 3 recites "wherein the total molar fraction of cerium and zirconium is at least 85 mol% based on the total molar number of metals in said metal oxide particle." The instant specification discloses the unexpected result obtained regarding the temperature where the hydrocarbon purification percentage reached 50% due to the unique combination of ceria in the core part and the high heat resistance attributed to the zirconia in the surface layer (page 4, lines 10-13; and Figs. 3 and 5).

Applicant submits that Morikawa does not specifically disclose that a particular molar fraction of cerium and zirconium is used in combination with rhodium supported thereon, as instantly claimed. Further, Morikawa fails to teach or suggest obtaining the unexpected results as disclosed by Applicant based on core part composition, high heat, and support on rhodium.

For at least these reasons, claim 3 would not have been rendered obvious by Morikawa. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

B. Morikawa in View of Kuno

The Office Action rejects claims 2, 3 and 7 under 35 U.S.C. §103(a) as being unpatentable over Morikawa in view of U.S. Patent Application Publication No. 2004/0087440 to Kuno (herein "Kuno 2"). Applicant submits that Kuno 2 appears to be applied as a §102(a) reference. However, for the reasons described below, Kuno 2 is not available as prior art against the instant claims. Applicant respectfully traverses the rejection.

The present application is the national phase of International Application No. PCT/JP2005/008466, filed April 27, 2005, and claims priority benefit of JP 2004/131612, filed April 27, 2004. Submitted herewith is, upon information and belief, an accurate translation of JP JP 2004/131612. As is evident, the pending claims are fully supported by JP 2004/131612. Accordingly, the pending claims are entitled to the benefit of the April 27, 2004 filing date of JP 2004/131612, which is before the May 6, 2004, publication date of Kuno 2. For at least this reason, Kuno 2 is not an applicable as a §102(a) reference.

In view of Kuno 2's inapplicable use as a §102(a) reference, Kuno 2 is also not available as prima facie prior art to the present application in a rejection under §103(a) as a §102(e) reference. Kuno 2 is assigned on its face to Toyota Jidosha Kabushiki Kaisha, as is

the present application. The assignment for Kuno 2 is recorded in the U.S. Patent and Trademark Office at Reel 014631, Frame 0912; the assignment for the present application is likewise recorded in the U.S. Patent and Trademark Office at Reel 018214, Frame 0254. Furthermore, the present application and Kuno 2 were, at the time the invention was made, owned by, or subject to an obligation of assignment to, Toyota Jidosha Kabushiki Kaisha.

Under the provisions of 35 U.S.C. §103(c), commonly assigned applications that are available as prior art only under 35 U.S.C. §102(e), (f) or (g) are no longer applicable as prior art to the claimed invention in an obviousness rejection. Because amended §103(c) applies to Kuno 2, Kuno 2 is not available as a prior art reference to the claimed invention in the §103 rejection.

Accordingly, Kuno 2 is disqualified from being used as a reference under 35 U.S.C. §103(a), and the rejection must be withdrawn. Accordingly, because the remaining reference cannot support the rejection, the rejection is overcome and must be withdrawn. Reconsideration and withdrawal of the rejection are respectfully requested.

V. New Claims

By this amendment, new claims 8-10 are presented. New claims 8-10 depend from claim 7 and, thus, distinguish over the applied references for at least the reasons discussed above with respect to claim 7. Prompt examination and allowance of new claims 8-10 are respectfully requested.

VI. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:

English Translation of JP 2004-131612

Date: December 17, 2008

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